

House Oversight and Government Reform Subcommittee on Energy Policy, Health Care and Entitlements Holds Hearing on an Assessment of the EPA's Renewable Fuel Standard Program

LIST OF PANEL MEMBERS AND WITNESSES

LANKFORD:

We will walk through the questions, and we are both well prepared to be able to walk through this together on it, so that's -- that's what you'll see on the dais as we're coming in and out.

Like to begin with the -- by stating the Oversight Committee mission statement.

"We exist to secure two fundamental principles. First, that Americans have the right to know that money Washington takes from them is well spent. Second, Americans deserve an efficient, effective government that works for them. Our duty in the Oversight and Government Reform Committee is to protect these rights.

"Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have the right to know what they get from their government. We will work tirelessly, in partnership with citizen watchdogs, to deliver the facts to the American people and bring genuine reform to the federal bureaucracy.

"This is the mission of the Oversight and Government Reform Committee."

This particular hearing deals with the Renewable Fuel Standards. Creation of the RFS in 2005 and substantial expansion in 2007 together represent what the U.S. government has done to take an enormous step to regulate gasoline usage.

However, when this law was written we were living in a different time. The United States had yet to go under -- undergo its current energy boom, which is spurred by advanced drilling practices. This was also before the recession and the reduced gas usage across the country and increased CAFE standards, which pushed down the demand for gasoline.

Much has changed since 2007, when then and problems in the law have become acute and need to be addressed. This is why I held a hearing on this issue in June of 2013 in this same committee.

According to the market observers, the U.S. fuel supply is right at the what's called the blend wall. This is the level where additional -- where added ethanol will make up more than 10 percent of the domestic fuel supply. This is not sustainable under current conditions in the American automobile market.

Many auto makers will void warranties if motorists use this mixture, known as E15, in their cars because of the engine damage that it can cause. It can especially damage older cars, boat engines, and small, nonvehicle motors.

In my home state of Oklahoma, consumers are worried about using gasoline containing ethanol. In fact, gas stations in my district will advertise the sale of 0 percent ethanol gasoline, or we'll say 100 percent gas, to keep consumers at ease, and it's a very in-demand product.

The lack of consumer demand, if not outright hostility, to high- ethanol blends makes it more and

more difficult for fuel makers to deliver a product that will actually sell. This constriction of the markets makes fuel prices increase, causing economic damage.

At the gas station down the street from my house there is a gas pump there that has E85 marked on the tank -- on the -- on the pump itself in a big logo on a big sign. But they don't sell E85 anymore there.

For several years they tried to and the product went stale in the gas tank under -- underground, and eventually they just swapped it out and now they have two E10 pumps there and no E85 but there's still a big E85 sign left over from the residual from the more than \$200,000 that this station spent to put in that extra tank. It's a common issue that's happening around the country in my -- my neighborhood and other places, as well.

Because the creation of the RFS was such a large undertaking and the authors of this law knew that predictions for the future gas usage might not come true, the EPA was given waiver authority to waive or suspend RFS requirements. It may waive -- this is the waiver and it may waive if there is inadequate domestic fuel supply or implementation of a requirement would severely harm the economy or environment of a state or region or the United States.

We're all aware what EPA can do to help with this problem, and we went over that in depth in 2013 in that June hearing. Starting with our hearing, Christopher Grundler, director of EPA's Office of Transportation and Air Quality, subsequently appeared several times before Congress. Based on these appearances, I felt like we were making real progress.

At his last appearance before Congress on this matter, representing the agency, Mr. Grundler stated, "The truth is we have hit the ethanol blend wall." This appears to be a clear acknowledgment of the problem to me.

Shortly before this statement was made, in November of 2013 EPA announced in its proposal for 2014 it would use its available authority to ratchet down the ever-increasing amount of renewable additives to our nation's gasoline and pull us away from the blend wall. The 2014 quantity (ph) for ethanol was scheduled to be released -- I'm sorry, the 2014 quantity for ethanol, the final one, was scheduled to be released November the 30th of 2013.

We're now more than a year past that deadline. We've waited and we've waited to move from passed proposed to final.

Finally, about three weeks ago in late November 2014 we received word on what EPA would do next on determining the RFS obligation numbers for 2014, a year that is almost gone. Mind you, we received this announcement with roughly six weeks left in the year of 2014.

What did this announcement say? It said EPA would not issue its 2014 blending requirements until sometime in 2015. We're now over 370 days late and climbing, and the year will be entirely gone before we get the requirements for the year that's already passed.

In addition to the problems with the 2014 numbers, this announcement means the 2015 numbers are already late, as well. The statute requires that they are to be released by November the 30th of 2014.

In addition to such an egregious delay being a violation of the law that created the RFS program, the notion of receiving blending requirements for a fuel produced in 2014 in the year 2015 is a little surreal. Clearly we have a problem.

Also, unfortunately, we're moving backwards, not forwards. Ethanol mandates were created in the

mid-2000s to help us produce energy domestically because it was assumed we were running out of oil. The decreased exports, now we're talking about increased exports from us.

We also wanted to be able to have the RFS to have a cleaner environment. But as Sierra Club and multiple other organizations have stated, water usage is becoming a major problem in dealing with ethanol.

There's also reports of increased ozone from ethanol use. It's not good for bikes -- or for motorcycles and for boats, many cars, trucks, and lawnmowers.

This has become an issue that does need to be resolved not only in the law at some point, but definitely in waivers in the meantime.

That's why we're here to be able to talk about this.

Glad Ms. McCabe is joining us here today. Janet McCabe is the acting chief of EPA's Office of Air and Radiation. She also signed the order pushing the decision to 2015.

I look forward to hearing about the EPA process. I know you're in process; we've had a long conversation about this. I look forward to hearing the process, knowing what the facts are, and knowing what we can do from Congress to make this better and what we can do as a -- as a cooperative agreement between the executive branch and the legislative branch to be able to resolve this issue.

With that, I recognize the very distinguished member from California, Ms. Speier, for her opening statement?

SPEIER:

Mr. Chairman, thank you.

And let me also say at the outset of this hearing to Senator- Elect Lankford how much I'm going to miss him. He is really reflective of the kind of leadership I'd love to see more of among my colleagues on the other side of the aisle.

I've enjoyed working with you. I've enjoyed collaborating with you. And I'm hopeful that this model will be one that we can see replicated among our colleagues in the future because working together we can get so much more done.

So I wish you great Godspeed as you move into the Senate and know that you're going to do very distinguished work there, as you have here in the House.

LANKFORD:

Thank you. Would the gentlelady yield?

SPEIER:

I certainly will.

LANKFORD:

It has absolutely been my honor. And I hope the process that we have had together in our committee, which apparently today has run off other members, but I hope the process that we have

had on this committee sets an example.

We can find a lot of things to be able to work on together, and I've really appreciated working on it and I appreciate you making those kind words because my wife is in the audience today, as well, and so...

SPEIER:

Well, let's have her recognized.

LANKFORD:

... always nice to be able to have nice words when my wife is here. My wife, Cindy, is right over there, so...

(APPLAUSE)

Thank you for those kind words. I yield back.

SPEIER:

So before we get further into the details of this hearing on Renewable Fuel Standards I want to take a step back and look at the big picture. There's a broad consensus among scientists that fossil fuel pollution has warmed the earth by more than a full degree over the past century, which has resulted in the sea rising by eight inches.

This is not an abstract problem to my constituents on the San Francisco Bay Peninsula, with more than 110,000 people at \$24 billion in property and a major international airport at risk from rising seas.

This is also not an abstract problem for people around the world, where 2014 is on track to be the hottest year on record. And climate change is not an abstract problem to the Pentagon, which has linked climate change to the potential for increased terrorist activity and other forms of violence.

The Intergovernmental Panel on Climate Change confirms that the best way to limit the damage is to reduce greenhouse gas emissions and to start proactively planning for the impacts. In its latest report on mitigating the effects of climate change, which was released last week, the IPCC says that it is not too late to limit warming to tolerable levels, but that to do so the world must act now.

The Renewable Fuel Standard, expanded by the Energy Independence and Security Act in 2007, is a bipartisan approach to confronting that problem. President George W. Bush said on the day that he signed this act, and I quote, "Today we make a major step with the Energy Independence and Security Act. We make a major step towards reducing our dependence on oil, confronting global climate change, expanding the production of renewable fuels, and giving future generations of our country a nation that is stronger, cleaner, and more secure," unquote.

The RFS created a market for the advanced biofuel and cellulosic biofuel industry to innovate a better fuel for our cars. More than \$5.7 billion has been invested in advanced biofuels. Unlike traditional corn ethanol, this industry is still in its infancy and it is relying on the RFS mandates to propel it to the next level.

Along with the relatively new industry comes jobs. The ethanol industry has directly and indirectly created close to 400,000 jobs.

In my district we have significant investment in the types of biotechnology that can drive a clean energy revolution. From new types of grasses to make cellulosic biofuel to genetically engineered algae that can grow diesel gasoline in vats, Bay Area companies are showing that advanced biofuels can be one of the ways to a cleaner future.

Now all this innovation is jeopardized by the EPA's failure to issue the 2014 Renewable Fuel Standards. The EPA is required under statute to release these standards by November of the previous year but has missed its deadline for each of the last three years.

Today we are having this hearing because the EPA is not issuing 2014 standards at all. They are essentially telling biofuel manufacturers and gasoline refiners that they will just have to guess how much biofuel they should have made for 2014.

Since there's no sign of a 2015 standard yet the EPA is telling industry that they'll just have to keep on guessing into the next year. This is no way to run a business and, frankly, no way to run an -- an agency.

I'm glad the chairman called this hearing today because these delays in setting RFS standards are creating market instability across the board in the agriculture, renewable fuel, and gasoline industries.

Today is an opportunity to find ways to move forward in a more productive manner on the RFS. I do not believe the answer is to throw away all the progress that the renewable fuel industry has made in reducing carbon emissions and driving technological innovation.

But EPA has to do a better job if the RFS is to accomplish its goals.

It is my hope today to impress upon the EPA the need to act swiftly and set the RFS for 2014, 2015, and 2016, and to consider exercising its authority in executing multiyear rulemakings for the RFS. EPA must acknowledge that it cannot continue with ever-increasing delays in RFS rulemaking and find solutions that will provide more certainty to the businesses that depend on them doing their jobs.

I also think that Congress has to share some of the blame. In every case I can think of Congress passes laws that require agencies to promulgate a rule just once, but the law establishing Renewable Fuel Standard required EPA to issue a new rule every single year. And since the RFS came into effect in 2007 the EPA's budget has been stagnant and they've lost over 2,000 full-time equivalent employees.

But I also do not want to lose sight of the larger picture. The United States is undergoing an unprecedented energy revolution.

We've recently overtaken Saudi Arabia as the world's number one oil producer. Energy security is important, but so is climate security. You can't drive on a road that is three feet under water no matter how cheap gas prices are.

Fossil fuels might be more inexpensive and more accessible than ever, but burning ever more oil and gas will burn us out of a livable planet.

That's why the RFS, while flawed, is important. The development of advanced biofuels is one of the most important tools we have to achieving a safe climate for future generations.

I look forward to hearing from EPA and Ms. McCabe about the barriers that face -- they face in implementing the RFS and how they plan to move forward and how we can be helpful to make sure you can do just that.

And with that, I yield back.

LANKFORD:

The members will have seven days to submit opening statements for the record.

We'll now recognize our first and only panel. Ms. Janet McCabe is acting assistant administrator for the Office of Air and Radiation at the U.S. Environmental Protection Agency.

Pursuant to committee rules, all witnesses are sworn in before they testify.

Ms. McCabe, if you'd please rise, raise your right hand?

Do you solemnly swear or affirm the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

MCCABE:

I do.

LANKFORD:

Thank you. You may be seated.

Let the record reflect that the witness has answered in the affirmative.

You have been through this before in this conversation. You know full well we'd be glad to be able to receive your testimony. Your written testimony will be a part of the permanent record, as well. If you'd like to make any additional statements you are welcome to do that, and you are recognized, Ms. McCabe?

MCCABE:

Thank you.

Thank you, Chairman Lankford and Ranking Member Speier, and I was going to say other members of the subcommittee, so I will in -- in the right spirit. I very much appreciate the opportunity to testify on the Renewable Fuel Standard program and the EPA's efforts to issue the most recent annual rule under the program that Congress established.

Annual RFS rules for the past years have generally reflected the Energy Independence and Security Act's targets. Since 2010, however, it has been necessary for us to lower the volume for cellulosic biofuel based on our projections for production in the coming year.

In developing the proposed 2014 RFS volume requirements we took market realities into account, including the lower production volume for cellulosic biofuels and a recent sustained decline in gasoline consumption as a result of improved vehicle fuel economy and other factors.

We proposed to use authorities granted under the Clean Air Act to adjust the required cellulosic, advanced, and total volumes for 2014 below the targets specified in the statute. We also proposed to maintain the biomass-based diesel volume requirement at 1.28 billion gallons, 280 million gallons more than the act specifies as a minimum.

Our proposed rulemaking explained the need to reduce the cellulosic volume for 2014 and also

considered the need to reduce the advanced and total volumes to account for the projected shortfall in cellulosic volumes. In that context the proposal included a detailed discussion of what is known as the ethanol blend wall, which limits, at least in the short term, how much ethanol can be blended into gasoline given the existing vehicle mix and distribution infrastructure.

In proposing the 2014 RFS standards, EPA sought to advance the broader goal of the RFS program to spur long-term growth in renewable fuels while taking account of the need to overcome the constraints that exist in the market and the fuel system today.

The proposal generated significant comment and diverging views, particularly about how volumes should be set in light of -- in light of lower gasoline consumption and whether and on what basis the statutory volumes for renewable fuel should be lowered. Most notably, commenters expressed concerns regarding the ability of the proposed approach to provide continued progress towards achieving the volumes of renewable fuel targeted by the statute.

These issues are both very challenging and very, very important to the future of the RFS program, and we recognize that our consideration of them has delayed the issuance of the 2014 standards. Accordingly, and as is stated in the announcement we made on November 21st, EPA intends to take action on the 2014 standards in 2015. In the same timeframe, we plan to take action on RFS standards for both 2015 and 2016.

Issuing rules every year has proven to be a significant implementation challenge, particularly in the last several years. Resolving the fundamental issues that we are facing as part of the 2014 standards rulemaking should go a long way to enabling EPA to complete additional annual rulemakings on time.

This administration strongly supports the statutory goal of the RFS program to increase the production and the use of renewable fuels, particularly advanced biofuels, over time. We have paved the way for increased use of higher-level ethanol blends, including by granting partial waivers for the use of E15 in 2001 and newer light-duty cars and trucks. We've improved the quality, transparency, and efficiency of our petition review process for new biofuel pathways that can count under the RFS program.

In September we updated our Web site to include new tools and resources that provide basic information quickly and easily for our stakeholders and to provide for a more user-friendly interface for petitioners to guide them through the process of getting approval for new biofuel pathways. We also developed a new "efficient producer" petition process that expedites the processing of certain types of petitions. Since September we've approved nine of these "efficient producer" petitions, and these are examples of the type of work that continues under this program.

EPA will continue to engage with our stakeholders and work in close consultation with the Departments of Agriculture and Energy as we move forward with completing the annual standards for 2014 and setting standards for 2015 and 2016. I want to emphasize that our intention is to put the annual standard-setting process back on schedule.

Again, I thank you for the opportunity to appear as a witness at this hearing and I look forward to your questions and our discussion.

LANKFORD:

Thank you, Ms. McCabe. We're going to have just open dialogue in the conversation here.

Let me ask a -- let me ask a quick question, or multiple questions I guess I should go through on this. When do you start actually preparing for the proposed new target? So if -- if it's to be released

for the 2014 by November the 30th of 2013, when do you start working on that?

MCCABE:

Well, as -- as has been noted here, in the past few years it has been more and more challenge for us...

LANKFORD:

Right.

MCCABE:

... to meet that deadline, so...

LANKFORD:

But when do you start working on it?

MCCABE:

Well, we -- we have staff who are working pretty continually on this program and paying attention to the information and the data that we're required to gather. That includes working with the EIA and getting projections on gasoline consumption from that agency.

So there's -- there's no precise moment when people start working on a particular standard. Because this is an annual rulemaking, we are in pretty continual work on it.

LANKFORD:

So how many people work on that continually? What would be your guess? Is this three people? Is this 10 people? What's your best guess on the staff that work on that?

MCCABE:

There are people who work on it full time and there are people who work on it part time so there...

LANKFORD:

So give us a ballpark.

MCCABE:

There's a goodly number of -- of people, perhaps my colleague can help me here?

LANKFORD:

Yes. Take a good shot at it.

MCCABE:

So within our Office of Transportation and Air Quality there are about three or four people who work on the program full time and an equal number who work on the -- on the program half time. But I'll -- I'll note that there are staff in our Office of General Counsel also who work on this program and --

and -- and others who help.

LANKFORD:

And Information -- Office of Information and such -- Energy Information. There are other people in other agencies who also work...

MCCABE:

Absolutely. And Department of Agriculture and Energy, as well.

SPEIER:

So it's not a lack of employees working on this, in terms of not meeting the deadline.

MCCABE:

No.

SPEIER:

We can't say that it's because you've had a loss of staff.

MCCABE:

No.

SPEIER:

All right. So you have enough staff.

LANKFORD:

So what's the key issue there? When you say this is difficult, situation's changed, obviously we've approached a new time with the corn-based ethanol, that we've hit the limits there with the biometric and -- biometric -- with biodiesels and everything else. That's a different story.

Obviously there are some new things happening with cellulosic, advanced fuels. We get that.

MCCABE:

Yes.

LANKFORD:

So we're trying to figure out the delay of over a year, why we're passing an entire year and then we're going to set the totals for this year after this year is actually over. What would cause that? If we had enough staff and this was predictable on what was happening we could all see the trends that were occurring.

MCCABE:

Well, so the -- the -- in 2014 we -- we faced two issues that we had not faced before which have proven to be extremely challenging, and they're related, and you mentioned them both, Chairman

Lankford, in your opening. And that is, as you know, in recent years we have had to address shortfalls in the production of cellulosic biofuels and we have done that through the -- through the waiver process.

But in 2014 for the first time we were facing the -- the ethanol blend wall in a way that required us to find a way to address that. And as you noted, we have several authorities in the -- in the act for us to do that, and -- and as -- as you know, we've proposed to use the "inadequate domestic supply" waiver authority.

Not everybody agrees with us that that is an appropriate interpretation of the statute or that -- that that is the appropriate policy place for the agency to land in that rule. And so 2014 proved to be the year where we were facing those quite challenging issues.

We spend considerable time working with the stakeholders -- many, many encounters with the stakeholders, both at the staff level, at my level as well, trying to make sure that we fully understand the implications, what's going on in the market, what is the right outcome here, and also making sure that we understand our -- our legal constraints and authorities and are applying those appropriately.

And so -- so those two things have really been what we have been working on this year and it proved to take longer than anybody would have liked.

LANKFORD:

Which has increased dramatically the volatility in the RINs market as everyone's kind of waiting to see what the targets are going to be, all the RINs credits that are out there, and the concern is that volatility only increases. When you talk about an increase in the price of the RINs, that is purely manmade, government-driven problem on that market which increases the cost to consumers, so as the price of gasoline goes down we have the opportunity to go back up again not because of gasoline out there but because of volatility created by a lack of government decisions.

So this does affect the consumer directly, as well as just the predictability of the process and where we go from here.

Go ahead?

MCCABE:

Yes. We understand the importance of certainty. We also understand that there are a number of factors that go into the price of RINs, including the price for feedstocks and -- and that sort of thing. But I -- absolutely we understand the -- the importance of -- of certainty.

SPEIER:

So let's talk about the stakeholders. You've got some very powerful stakeholders that are trying to pursue this in a manner that benefits them in particular, and then you have the threat of lawsuits. In fact, there's one, I believe, that's been already filed.

MCCABE:

Yes.

SPEIER:

So how does that impact your rulemaking process? Is it the fear of litigation that is somehow

impacting your ability to get this rule out?

MCCABE:

No. It isn't the fear of litigation. We understood and understand that we have missed the statutory deadline and that subjects us to a legal action, and so -- so it -- it was not that.

The issues are the substantive issues that -- that I've mentioned, and as with -- with any challenging and -- and important rulemaking, we want to make sure we are fully working through the various issues that are brought to our attention, the legal arguments. We certainly want to make sure we -- that we are confident in our legal authority and when we render a -- a rule, because if we are challenged on it, as we expected we would be, and -- and it's overturned, that is further uncertainty for the market.

And so we work very hard to make sure that all of our rules are very -- on very sound legal basis.

SPEIER:

So is there some -- we've got to get this fixed, and while I -- I understand that you're working very diligently at it, that you have enough staff to do it, it's -- it's still not giving me the confidence that we -- we're fixing it. Would we be better served if it was a rule that was put in place for three to five years versus one that you have to contemplate each and every year?

MCCABE:

Well, Congresswoman, I -- I really can't speak to the statute. That's not my job to -- to decide that.

SPEIER:

Well, it is your job to help us figure out how to make this work better.

MCCABE:

Well, and we -- we certainly would be happy to provide technical assistance to you as -- as you start thinking about that. An annual rulemaking is a challenging thing to accomplish, but I'll just emphasize that this year in particular, because of these sort of watershed issues of the blend wall and the -- and the waiver, this year has been particularly challenging.

We do think that in 2015 we will be able to resolve 2014, 2015, and 2016, as our notice stated that we intended to do in order to -- to -- to get the program back on track and get us over the hump of dealing with these fundamental issues.

LANKFORD:

So can I ask our obvious question? We were scheduled to get the 2014 numbers sometime in 2014. That is not occurring. Now you're saying we're going to get to 2014 and 2015 sometime in 2015.

Can you give us a date certain when this will be settled in 2015? Because you're talking about 2014 settled in 2015, 2015, which is already late, and then trying to resolve 2016 to get that one on time, which would be terrific. And we'll talk about the dynamics of 2016 and the waiver and all those things in just a moment, but can you give us a date certain?

And then I want to recognize -- we have some other members that have joined us, as well, for some questioning. But can you give us a date certain when this is going to be resolved?

MCCABE:

I can't give you a date certain, Congressman, because rulemakings are -- are -- are not ones that I can...

LANKFORD:

So give me a month.

MCCABE:

We will move as expeditiously as we can. We certainly...

LANKFORD:

So this could be 2016 before this comes out and we'll miss two years.

MCCABE:

We are committed to getting this -- these rules out in 2015 and -- and meeting our deadline for the 2016 volumes.

LANKFORD:

OK. Well, let me just say my concern on it. My concern is that this is going to come out in time for November the 30th of 2015 to try to announce the 2016 time and we're going to literally have two years in a row that we will not have anything sitting out there. Because if you just say, "We'll get it out in 2015 and be ready to go for 2016," that's November the 30th of 2015. That's even more problematic and even more volatility.

It cannot take that long to promulgate a rule when the proposed rule is already done. I don't understand how the proposed rule can be done for a year and it takes a year to work through the comment period.

MCCABE:

We understand the importance of moving just as expeditiously as we can...

SPEIER:

All right, then why don't you give us a date?

MCCABE:

I'm not in a...

SPEIER:

Well, I understand that, but you can -- you can -- you could have a goal that your employees can work towards. I mean, to just have this kind of ephemeral "we'll have it done sometime in 2015" doesn't give the industry any confidence moving forward.

MCCABE:

We are working on the steps that we'll need to take, the time that that will take, and we'll...

SPEIER:

That's gibberish, Ms. McCabe. I'm sorry. Just be clear. What is your goal? Is it April? Is it May? You've got to have a goal that we can hang our hats on.

MCCABE:

My goal is to have these programs done as quickly as we can in 2015, and when we have a schedule that we can let people know about we will do that.

SPEIER:

Well, maybe, then, members of Congress should introduce a bill to repeal it unless you have a rule out by a date certain. Will that be enough to -- to encourage the actual issuing of that rule? I mean, I don't think we're asking for a lot here.

LANKFORD:

No. We're not.

MCCABE:

We will certainly keep the committee informed.

LANKFORD:

Well, you've kept the committee informed for the past year telling us it's coming, and that's the problem. We've heard for a year, "It's coming."

OK. "It's coming" is not enough.

Let me recognize some other members here.

Mr. Farenthold is here from Texas?

FARENTHOLD:

Thank you, Mr. Chairman.

And before I go on with my -- my questions I want to point out in -- in response to the -- the -- when are we going to get this information, my mother always taught me and I always grew up believing a promise isn't a promise unless there's a deadline, and I would really encourage you, even if you're not willing to share that deadline with the committee, at least share it with some employees and -- and hold them accountable.

We had a rather long and involved Republican conference so I apologize for being late, and if I ask something that's already been answered please -- please bear with me.

I did want to ask, how does the EPA see the growing supply of domestic oil and gas, along with the lower domestic transportation and fuel prices, affecting the RFS?

MCCABE:

One of the key issues in the RFS as we look to try to implement rules that implement Congress' intent is looking at the -- the -- the expectations of Congress and the -- the expectations of -- of fuel consumption that we -- that we get from -- on a year-to-year basis from the EIA. And that has been a major factor in trying to determine how we set the volumes for the -- the RFS. As we've noted, the consumption of -- of gasoline is going down in the country and -- and that has implications for how we implement the statute.

FARENTHOLD:

And is -- is the EPA taking into account any other diversions from traditional petrochemical products to corn or other biomass-based products -- for instance, the water bottles we all drink from now, you're -- you're seeing a trend toward those being created, rather than traditional petrochemical-based plastics, being created from bioplastics, which is decreasing the demand for -- for fossil fuels, increasing the demand for biomass. But is any of that taken into account and is there a possibility of perhaps getting RINs credits for -- for plastics manufacturing, for example, or other new technologies, moving away from petrochemical-based feedstock or raw materials and moving to biomass?

MCCABE:

Well, Congressman, we're -- we're focusing on -- on implementing what the statute requires us to do, which is to look at the expected production of specific kinds of transportation fuels and the development of new advanced biofuels that meet the -- the requirements of the statute.

So that's what we look at: Looking forward, what is the expected production of cellulosic biofuel and advanced biofuel and those sort...

FARENTHOLD:

And can you tell me to what degree, if any, it's being taken into account the effect on food prices, particularly in developing countries, as agricultural acreage that could be devoted to producing corn fit for human consumption is diverted to creating corn -- I use corn as an example; it could be any biofuel -- is being diverted to biofuel away from food and what effect -- and again, what effect that's having and how you all are considering it?

MCCABE:

In the initial rulemaking that established the RFS program there was an extensive study, and there have been studies by -- by other agencies on those sorts of issues. And that is all available and we'd be happy to provide you more information if you'd like it.

FARENTHOLD:

And, you know, I guess my concern both with the food prices and -- and -- and the diversion into plastics and other manufacturing, we don't want to get caught in a hard rulemaking or a hard law decision that's not taking into account new technologies and new development in the marketplaces. And I'd be particularly interested in knowing what, if anything, Congress needs to do to -- to take those into account or make sure that you guys are taking those into account. So if you could include that in what you're providing us I'd appreciate it.

MCCABE:

Sure.

FARENTHOLD:

And finally, I've got two other quick questions if you -- if you're OK, Mr. Chairman?

So does the EPA still recognize the -- the blend wall and some of the technology issues as it did in the proposed rules in multiple hearings last year?

MCCABE:

We do.

FARENTHOLD:

And you testified last year before the Energy and Commerce Commission about liability concerns being one of the biggest hurdles with the penetration of E15. Has anything changed technologically or otherwise that would alleviate these concerns?

MCCABE:

I'm not aware of any -- any new information on that. There's a range of opinions about the concerns with E15 and -- and with respect to motor vehicles 2001 and newer. Our information shows that there are not problems with using that fuel in those vehicles.

FARENTHOLD:

All right. Thank you very much.

Mr. Chairman, thank you.

LANKFORD:

Mr. Meehan?

MEEHAN:

I thank the chairman and I thank the ranking member. An opportunity to sit again on a panel together.

And I thank you, Ms. McCabe, for the -- for -- for being with you here today.

This is an important issue, and let me tell you a little bit about my district and the refineries that closed in my district until there were innovative companies who found a new and better way to take advantage of the fuel supply, including the utilization of -- of Bakken, among other kinds of things.

Important to their retaining this significant job-producing piece in my district, they were also critical on numerous occasions, but when there were challenges, like the storm, it was their presence which assured a fuel supply that kept New York City functioning. So the ability for these refineries to be operable has very real and genuine national security impacts.

They're also facing, as all in the industry are, real economic pressures. But included among those pressures is the remarkable uncertainty which this particular policy impacts. And I know you appreciate that.

But my problem is not only is it the uncertainty that's associated with it, it is the fact that in addition,

we have speculation in this market. You're creating markets by your activity or your failure to act, and those who then look -- and they don't care about the jobs in my district, and they don't care about the availability of fuel; they care about the ability to make money on a hedge. And that does not serve our national interests. So what you do has a lot at stake.

So let me ask you, if -- if I may, a -- a -- a number of questions. When you are now setting the 2014 mandate, how are you going to be doing this when you still have variables that are somewhat uncertain with both the transportation fuel consumed and the renewable fuel consumed?

I mean, all this speculation is around things that you're trying to predict with some degree of uncertainty. How are you going to do that and -- and give us some degree of certainty?

MCCABE:

Well, Congressman, with -- with respect to 2014 and moving forward with 2014, we -- we recognize the -- the calendar and that we are significantly through the -- the calendar year 2014 and that, as we have said, we intend to finalize this rule in 2015 so we will be all the way through the calendar 2014 year. And we will clearly take the fact of the calendar and the -- the history that has occurred in 2014 in making a determination about final 2014 volumes.

MEEHAN:

So will, then, you be able to use -- I mean, to a certain extent, then, you'll be able to use actual numbers with regard to 2014.

MCCABE:

That's correct.

MEEHAN:

Well, then, but the problem is every time we delay -- and I know this is some of what my colleagues are getting to -- you're into the next year's obligation. So is it your intention to rely on 2014 or are we going to blend 2014, 2015?

How do you handle the uncertainty about looking at future predictions as being part of it? Do you expect that you will include parts of both not only what past history has shown, but what you expect in the future, and what authority do you have to do both?

MCCABE:

We expect to set annual volumes for the individual years based on appropriate data for each of those, and that will -- that will be -- be different. And we intend, as I have said, by issuing the 2016 rule in 2015, to get the program back on track so that refiners and all other stakeholders will have the certainty that the -- the statute calls for.

MEEHAN:

So you do expect that there will be some degree of certainty?

MCCABE:

Yes.

MEEHAN:

How do you respond to the concern I raised about speculation in the market, and should you be involved in allowing that kind of -- you know, these -- these RINs and other kinds of things, you appreciate the dramatic escalation in the -- the -- the cost of a RINs. And because you have this on the refiner and not a blender, because it's unique to the refiner and it starts to create remarkable spikes in the cost, it has a genuine impact on the bottom line.

So, you know, my -- my concern, then, is -- is, with respect to that impact, how -- how do you address that and -- and the speculation?

MCCABE:

Well, there -- there -- as I've said, there are a number of factors that -- that affect RIN prices, and that is -- that is -- it's a tradable commodity and -- and -- and not a -- a market that's controlled by -- by EPA. Our...

MEEHAN:

No, it's not controlled, but it's -- it's almost uniquely influenced.

MCCABE:

Our actions, I -- I agree, have impact on the market, as -- as do other things, as well. And our information, actually, Congressman, is that the vast majority of -- of trading that's going on in the system is between the refiners and the -- and the blenders, and -- and -- and reflects their anticipation and the costs that they are experiencing.

MEEHAN:

Mr. Chairman, I have other questions but I don't want to -- I don't want to monopolize the -- so I'd be glad to come back to some other...

LANKFORD:

I'd be glad to. Mr. Meehan, we are opening up this is a free-flowing conversation, based on our panel and the topic and the conversation that all of us want to be able to have on the same issue.

Can I ask a question?

Mr. Meehan, feel free to be able to jump in at any time, as well.

The issue is -- you've mentioned a couple times and I'll allude to the EPA is looking to try to see what they can do to spur growth in this (ph). I would assume that means increased usage of ethanol. Is that what you mean, to -- to use more ethanol in our system?

MCCABE:

The key objective of -- of the statute was to focus on the increased development and use of -- of advanced biofuels, which have the most benefit for energy security for the greenhouse gas reduction, and so a focus of the statute, as -- as you can see looking at the volumes, is to increase the volumes of advanced and -- and cellulosic biofuels. And a -- a -- a lot of our focus...

LANKFORD:

But the uncertainty right now is based on corn-based ethanol, though. Am I correct? Right now, because you've hit this unique year, not based on those -- those you already know how to deal with. This delay is based on the other area. Am I correct?

MCCABE:

Right. When you hit that blend wall and -- and you -- you've saturated the 10 percent market...

LANKFORD:

Right.

MCCABE:

... there -- there are ways to use additional ethanol in the system...

LANKFORD:

OK. So give me an example.

MCCABE:

E15 and E85 are -- are -- are two ways to do that, and we're -- as I said, you know, we're -- we're in touch with the stakeholders significantly to -- to understand how those fuels are moving, and we're seeing some gradual increases in it but it is -- it -- it's -- it's...

LANKFORD:

So I guess my question is, we have this -- we have this number that was an arbitrary number set by Congress now almost 10 years ago, with it anticipating increased gasoline usage across the country, but now we don't have increased gasoline usage having across the country; we have a decline of that, based on CAFE standards and the economy and everything else. So we all know that fact.

But EPA is committed to try to figure out how we can just use more ethanol anyway, rather than try to hit the waiver and say the intent of Congress was that we would match up ethanol with gasoline usage. We have less gasoline usage but we want to continue to use more ethanol anyway. Is that what you're saying? When you talk about spurring usage I'm trying to figure out why.

MCCABE:

We're trying to implement the statute as best we can. Congress set volumes...

LANKFORD:

But you went back to the intent, though. The intent of it wasn't to increase ethanol usage, it was energy independence. If we're using less energy as a country, why is the intent to try to continue to use more and more ethanol anyway?

MCCABE:

The intent is to do our best to -- to meet Congress' statutory...

LANKFORD:

So you need clarity from Congress in a piece of legislation on what this would be to be able to help you in this decision?

MCCABE:

We need to look at the information. We need to keep in mind the purposes of the statute. We need to look at our legal authorities and apply those appropriately.

LANKFORD:

Well, let me ask one more question. I don't want to hog this conversation, as well, but you mentioned earlier about past- 2001 vehicles, EPA has -- has stated that past-2001 vehicles can use the E15. Can I have a slide come up there just dealing with that gas cap? I want to be able to show.

This is something Mr. Grundler and I had a long conversation on, as well. Most vehicle warranties will be void if they use the E15.

This is a picture of a gas cap from a 2013 Toyota. Now this same gas cap is used for Toyotas and for Lexus vehicles. It clearly states: Do not use the E15. It's not just E85; don't use the E15. Most manufacturers will state they will void your warranty if you use it.

I also have another chart here that shows the vehicles that can use the -- or the manufacturers that can use the E15. See if we can get to that one -- the chart. Our chart of red, by the way. One back.

This has a list of all manufacturers -- those that have said they would recommend usage of E15. And you'll see the years, beginning with 2001 all the way to 2014. The greens or the yellows note that they would be OK with it, that they have at least some models that are OK with using E15.

This is a real point of contention with EPA we've bumped into several times. EPA continues to say, "We've checked. 2001 and on is fine." Let the actual owner of that vehicle, if they use it, lose their warranty in that area.

Now I don't think EPA is willing to go ahead and cover any costs of repairs, and the American taxpayer most definitely is not willing to cost any -- any -- any cover those repairs for vehicles because their warranty was voided. This is a big issue for us.

So when we talk about pushing more E15, the manufacturers of the vehicles are saying, "Don't do it," to the consumer, and EPA is telling the consumer, "You're going to have to do it because we have this arbitrary goal we're not willing to do a waiver on that we have the statutory to do the waiver on but we're choosing not to. So you're going to use more E15 whether your car wants it or not, or whether you want to buy it or not."

That's a problem.

MCCABE:

If I could respond, Congressman...

LANKFORD:

Sure.

MCCABE:

We have proposed to use the waiver. We are not requiring for this rule for any consumer to use any particular type of gasoline. And in fact, our job in -- in estimating and -- and predicting the volumes and setting the volumes takes into account what is happening in the market.

And you reflected, I think, the -- the -- the limited number of E15 stations. I think the facts...

LANKFORD:

E85. Can you go two slides forward there, I think? Let me show you this, too.

There it is, right there. Can you go one more? Let's see if we can get it. There it is.

This is the station down the street from my house. You can see the -- the pump is clearly marked this is an E85 pump, but you can look on the actual handles, there is no E85 sold there anymore. And when I talked to the owner of that station he said, "We couldn't sell the E85 gas. We spent \$200,000 putting in tanks and the -- the gas would go stale because there wasn't enough demand for it." And so now they've just shifted to two E10s and he's very concerned that he's going to be pushed to have an E15 as a requirement to be there, as well.

If you go back one slide there, as well -- this is what they sell now and is -- that's frequent. That was taken last weekend down the street from my house. By the way, I want to brag at \$2.21 gasoline prices in my neighborhood, as well, but...

SPEIER:

Just add another one and that's what it is in my area -- \$3.21...

LANKFORD:

So you're at \$20.21 there in San Francisco, yes.

So it's this -- this unique challenge that not only the consumer is facing, that the blenders are facing and the refiners are facing, but also every single small gas station around the country is also facing: What are we about to be required to do to hit a target that, yes, is a statutory target, but EPA was given waiver authority for just an occasion just like this so it doesn't cause every station to spend \$200,000 on new tanks to hit an arbitrary total to help us get (ph) energy independence when it's not needed?

MCCABE:

That's exactly why we proposed the waiver. It's why we have been working...

LANKFORD:

But not finalized it.

MCCABE:

But not finalized it yet.

SPEIER:

Can I...

LANKFORD:
Yes.

UNKNOWN:
I'm sorry. Let the...

LANKFORD:
Recognize the ranking member?

SPEIER:
Let me just point out that the high-performance cars at NASCAR use E15 gas, for what it's worth, so there -- there is some value in encouraging the auto manufacturers to make vehicles that can accommodate E15 gas.

But I would like to go back to something you said earlier, Ms. McCabe, and ask unanimous consent that we put into the record statements by the Advanced Biofuels Association, the Algae Biofuel Organization, Biotechnology Industry Organization, and the National Biodiesel Board into the record?

LANKFORD:
Without objection.

SPEIER:
And I'm going to read from a statement from the Advanced Biofuels Associations.

"At this point we suggest that at a minimum the EPA should move expeditiously to post a new cellulosic RIN value for the 2015 calendar year, which we've been waiting for for nearly two years. It is absurd that the current corn RIN is valued above the cost of RINs for the cellulosic pool. The way this program is being run today, we are effectively regressing, providing price supports only to those fuels that are already at full-scale production at the expense of the advanced fuels that Congress intended to develop when it enacted the RFS2 program."

So you said earlier that you wanted it to indeed expand the use of advanced biofuels, and that is part of the charge of the legislation. And yet, you've got this pent up demand from all of these companies, and as I understand it there's some 30 new biofuel pathways that have been awaiting agency review and approval for over two years and they still can't get an answer.

I mean, this is no way to run an agency, and certainty is one of the hallmarks of businesses being able to succeed. I mean, we're going to kill off the goose that could lay the golden egg if we don't start acting more expeditiously. Would you please respond to that?

MCCABE:
Yes, certainly. And we -- we agree that encouraging and -- and providing a path forward for innovative and new renewable fuels is absolutely an intent of the statute and...

SPEIER:

OK. I understand that. I believe you. But what are you doing about (inaudible) been waiting for two years?

MCCABE:

Yes.

SPEIER:

What's it going to take?

MCCABE:

Yes. We undertook, over the course of the summer, a total relook at our process for reviewing applications for pathways approvals, which we finalized in -- in September, and so we've -- we've completely redone the -- the -- the way we -- the information that we lay out so that people can bring us applications that are ready to be processed, and so we -- we've created a streamlined approach for what we call these "efficient producers."

And as I mentioned in my opening statement, since -- since we finished that relook at the process we've -- we've signed off on nine of those pending applications. So we -- we agree with you that moving these things through promptly is important. That's why we undertook a relook of our process and we've seen the results of being able to move things through quickly.

SPEIER:

So why are all of these statements, then, suggesting that there's no action?

MCCABE:

I'm not familiar with the statements, Congresswoman, so -- so I don't know, but this is a -- a relatively new adjustments and changes to our process and they -- they may not be aware of the -- the changes that we've made. But we are now able to process things more quickly and to help people who want to come to us with applications know better what they need to put in their application so that we will be able to process it promptly when it -- when it comes in.

SPEIER:

So for the 30 applications that have been pending, or pathways, I should say -- I don't know how many applications are pending -- should they resubmit under this new streamlined program that you've created?

MCCABE:

Well, each one will be in a different situation and our staff is certainly available to work with anybody who's got a pending application to help them know whether there's additional information that be -- should be submitted. I don't think we're asking people to start all over again, but -- but this -- these changes is -- is speeding up and freeing up the entire system for us to be able to -- to -- to take a look at all the ones that we have and the ones that continue to come in.

SPEIER:

All right. Thank you.

LANKFORD:

Before I recognize Mr. Meehan, can you define "quickly" for me? You said this is moving more quickly. What does that mean for someone that is in this process? How many weeks, how many months will it take them for them to go start to finish?

MCCABE:

You know, I don't have that information, Congressman. Be happy to...

LANKFORD:

Give us a guess. Is this a two-year process? Is this a 90-day process?

MCCABE:

It really depends on the -- on the particular application. There's a whole range of pathways that people bring to us. Some of them are -- are very complex; some of them are -- are much more straightforward in terms of being similar to other things that we've seen.

LANKFORD:

Sure.

MCCABE:

So there's -- there's not a standard...

LANKFORD:

So the -- the -- the struggle that we would have here is to define "quickly," then, and to say this -- this process has changed. How much faster is it now than what it used to be?

MCCABE:

Well, I -- I can tell you -- we -- we can provide those numbers for you...

LANKFORD:

Please do.

MCCABE:

... Congressman, but I can tell you that we've -- that we've approved nine here in the -- in the last two months, and that's certainly more than in the -- in the months that I've been...

LANKFORD:

But when did they -- those nine that have been approved, when did they start in the process?

MCCABE:

I don't know that. But what...

LANKFORD:

The definition of "quickly" is when you're on the other side of the desk waiting to get an answer, rather than this hit my -- my desk but it was actually on someone else's desk before and it was on someone else's desk before.

MCCABE:

Yes.

LANKFORD:

So the -- the challenge is trying to figure out, start to finish, when they start the process when are they getting approval.

MCCABE:

We'll be happy to provide you with more information on that.

LANKFORD:

Please do. Please do.

Mr. Meehan?

MEEHAN:

Thank you, Mr. Chairman.

I want to sort of follow up. And it may not be exactly the same issue but I think it's the same genuine -- general concern and it is trying to understand how you make some of these decisions and then what we can do to assist you, if we need to, in expedited activity. I articulated the concern about having small refiners.

How do you deal with those who are petitioning for some kind of relief under what may be rulemaking that you do? Do you use criteria to determine whether a small refiner may have a reason why they would be enabled to not have to abide by the same standards as perhaps a much larger refiner?

MCCABE:

Yes. You're referring to the petition process...

MEEHAN:

Yes.

MCCABE:

... for small refiners to get waivers. We work with the Department of Energy, as -- as we're required to, on evaluating any of those, and yes, there -- there is a set of criteria that relate to that particular refiner's situation that -- that we would look at.

MEEHAN:
What are those criteria?

MCCABE:
If you'll give me a minute, I'll -- I'll -- I'll find them.

MEEHAN:
Well, they are -- oh, OK. If you're able to get it more quickly.

MCCABE:
I've got them here.

MEEHAN:
OK. Thank you.

MCCABE:
So these are the kinds of things that -- and the Department of Energy developed these metrics back in 2011 for -- for this purpose, so they are things like access to capital and credit, other business lines besides refinery -- refining and marketing, local market acceptance of renewable fuels, the percent of...

MEEHAN:
OK. So let me ask, though, but so -- so you look at those other kinds of factors, but in effect you're tying it back to some sort of parent company responsibility that -- that influences that kind of a determination?

MCCABE:
Well, the -- the -- the Department of Energy, and -- and we together look at these factors, but we -- we look at the -- the particular company that's asking for the petition, they're asking for the waiver, in -- in -- in light of their particular circumstance.

MEEHAN:
And that's the question. And I should be careful because I'm not -- but I'm -- I'm looking at a bottom-line problem in which I have an industry which really isn't in the refining business but they have made a particular effort to see if they can help control the greatest driver of their costs, which is -- which is fuel. And the unique circumstance they face is after having found a way to deliver a product to market for them and the rest of the aviation fuel industry, that's saved the jobs because they've found a way to produce this product at a competitive price until you introduce RINs. And then suddenly I have this artificial market that is completely influencing the bottom line of this refinery.

And the -- the -- the thing is, well, we'll just get out of that line of work. It is not a vertical organization. This is a product which has been utilized to support something in an industry.

So when you are looking at the larger industry, why should the activities in a completely different area be influencing the decisions that are made about a -- a -- a unique part of the issue, which is, you know, refining unto itself, as opposed to what the rest of the capital of an organization is?

MCCABE:

Well, Congressman, I wasn't involved in the development of these criteria so I -- I can't speak to them specifically, but we'd certainly be happy to follow up with you with any questions related to...

MEEHAN:

Well, I'm particularly interested in, as we're looking through the concept of hardship petitions and...

MCCABE:

Yes.

MEEHAN:

... and -- and meaningful response to the petitions. And I appreciate, then, if you're working with the Department of -- let me ask one other question about this -- this area, because again, it goes back to the supply of RINs. And you have within your authority the issue to look at inadequate domestic supplies of certain things.

How do you make those calculations, or how are you moving along on -- on that process? And how do you calculate whether there is an adequate supply of -- of RINs?

MCCABE:

Yes. That really goes to the -- the heart of the matter and the -- and the responsibility that we have in setting the volumes for a given year, and in particular, now that we are experiencing the -- the blend wall issues that we're experiencing.

So we -- we look hard and try to gather the best information that we can from -- from EIA and -- and -- and other agencies and the industry, as well, to get as -- as good a sense as we can get about what reasonable expectations are, what growth expectations are, and -- and then try to make sure that we're doing the -- the best job that we can to balance and make good assessments about those judgments.

As the history of the -- of the program has shown, the development and production has not moved along as quickly as -- as Congress anticipated, so that particular inquiry is quite a challenging one.

MEEHAN:

Well, some of it is because of the nature of the -- of the market itself. I mean, some of this is counterproductive. They're not moving because, as they said, the market doesn't exist for the fuel that people are being required to -- to generate. And what's frustrating to me as somebody who cares about our environment, in the end, in order to produce these the overall carbon impact is even larger.

It is counterintuitive that we are driving forward with this for a variety of different reasons, including the carbon footprint of the overall impact of what we're doing.

MCCABE:

Well, I think one encouraging thing, Congressman, is that we do see growth in advanced fuels and in cellulosic fuels. And as Congresswoman noted, there are companies out there coming up with processes, coming up with innovative processes, and we do very much want to encourage all of

that...

MEEHAN:

Is it growth, though, but I mean is it being growth that's being shoe-horned in by virtue -- because I -- it's -- I -- I know it's a Hobson's (ph) choice. I would love to see the continuing development of some of that but at what point in time is it -- is it growing because it's being supported and pushed into -- into something, as opposed to being able to -- to, you know, actually be accepted in the market?

MCCABE:

Well, I -- I think that there are smart and innovative companies out there that for a variety of reasons are motivated to move forward with these exciting businesses and -- and new processes. And there's a lot of ingenuity out there that -- that results in -- in all the petitions that we have or the requests for pathway approvals that we have pending.

MEEHAN:

Well, there is. And I actually have visited very similar things and I'm impressed by them and want to see them. But again, I want to make sure that their -- their -- their -- the carbon footprint, again, is one aspect of things and...

MCCABE:

Yes.

MEEHAN:

... the competitive nature to make sure -- all right.

Well I want to thank you. I would like to see if we can, on the staff side, follow up on some of the more particular questions with respect to the hardship petitions and things of that nature. So I thank you for...

MCCABE:

Absolutely.

MEEHAN:

... and I thank you for your work in this area.

MCCABE:

We'll be glad to do that.

LANKFORD:

Mr. Collins?

COLLINS:

Thank you, Mr. Chairman.

It's just amazing, you know, sitting here listening. I mean, it's one of the frustrating things of being in this committee. And I -- I appreciate the chairman's question actually coming from yesterday, what is "quickly"? I never thought we'd have to define "quickly."

Yesterday it was in this room we were describing is it glacial pace, Biblical pace? I mean, "quickly" to most people means relatively short time -- few weeks, maybe a month.

And to continue this -- this process, to keep looking, it reminds me of a story that was told just the other day by another member about four frogs on a log. Three decided to jump off. How many were left on the log? Four. Because only three decided to; they didn't do anything.

And that's exactly what -- your answer just a moment ago prescribed that perfectly. "Well, we're looking at it. We're looking to see what's the best bet. We're going to try. We're looking again. We'll make a decision."

But we never seem to get to the decision. And I think that's the concern for this, you know, hearing and -- and looking at it is -- and then what was really interesting was -- is your discussion right then discussed the new technologies coming out in spite of the inactivity and in spite of everything, or maybe because of. So maybe it's a backward, twisted mentality to say, "If we don't do anything all these folks are going to go out there and be so frustrated they're going to come up with something else."

And we can talk about, you know, fuels and -- and the footprints that were discussed, but there's also another aspect of this, and this is a question, you know, for my area, dealing especially with poultry and dealing with others, there's a cost aspect. And, you know, we're not talking (ph) about numbers and, you know, again, I've really not heard a good reason why.

It was amazing to me, you said that this past summer we completely reworked how we're looking at this. Well, this is not like it's been working -- it's -- it's not been working for a long time, so when to stop to figure out how we can get more processed, the brokenness of this system is just amazing.

But when you look at the brokenness and why it's broken and the effects it has on other industries, not just this side, you know, from just my area, Georgia, is either the 102 counties in Georgia, which a million of it -- produce more than \$1 million of poultry at the farm level -- at the absolute farm level.

Forty-seven percent, it's the largest segment in Georgia's agriculture. \$38 million is poultry's annual contribution to Georgia's economy from farms, processing, further processing, and satellite businesses; 138,000 jobs depend on the poultry industry, whether indirectly or directly, and there is -- then comes this -- \$44 billion is the higher actual fee cost producers have incurred due to RFS.

The problem that we're seeing here and the problem that I would like to understand is -- is -- maybe the question is is there other impact decisions when dealing with RFS besides the very narrow tube (ph) of RIN and other things on what we produce? The impacts in other areas of the economy -- is that even thought about? And especially your inactivity and being able to -- to come forward with a standard.

MCCABE:

Yes, Congressman. We absolutely understand that there are implications for this program to a variety of industries, and the -- the poultry industry is certainly one and -- and other agricultural industries, and that is why there is such a -- one reason there is such a divergence of views among the industry stakeholders on how EPA should proceed with this program. So we're -- we're very mindful of those implications.

COLLINS:

Well, then, at a certain point in time then maybe you just -- at this point the paralysis that is going on here through analysis and other decisions and all the conflicting reports and members of Congress -- and I'm not denying that -- and -- and interest groups, at a certain point in time there needs to be decisions made on this is -- the -- when you sort of weights and balances, and I think that was discussed by Mr. Meehan as well, that, you know, the carbon footprint's actually larger, there's other issues here.

Why are we continuing down a path in which we're charging more to put in our mouth in trying to fix what we're putting in our car? That's the problem that I'm having a hard time understanding.

We want to help average Americans who are struggling when their food costs are going up and we're trying different ways that actually are struggling in their gas tank. The only thing that I have frankly seen that RFS standard actually does is help small engine repair, because you want to screw up a small engine? Put the ethanol in it and let it sit. So small engines are flourishing, but past that you're hurting agriculture, you're hurting poultry, you're hurting livestock, you're hurting those who want to get into this industry, maybe to -- to investments who say, "We want to find cleaner energies. We want to find cleaner alternatives."

But going through this process, it would be harder for an investor to sit there and look at maybe these newer technologies that are developing when they look at this process and say it is so broken. What do you say to those who may side on the fact we need to focus more on the -- the environmental protection side of it and maybe not the economic impact? What do you even say to them to say, "Well don't worry. We'll get our act together so that we can actually give you some help"?

MCCABE:

Well, our -- our job, Congressman, is to implement the statute that -- that Congress passed using the authorities that are in it, and -- and that is what we're trying to do to the best of our ability, balancing all of these factors. Congress set certain volumes that the agency is supposed to implement unless we find that one of the reasons is present that we can exercise the waiver authority, and that's what we propose to do and -- and those are the issues that have been discussed over the last year, and -- and those are the issues that need to be resolved and we intend to do that.

COLLINS:

Well, I think that's the other, you know, issue, in '08 and -- and '12, as well, also there was the supposed off-ramps during the economic crisis, things like that, that would help some of these producers, and -- and again, just basically got passed over due to other concerns. I think that's the part for -- for the -- for the workers, for the agricultural community, for the others. You know, we can have the conversation about the -- the standards. I think the interesting point of what you just said, though, is you are tasked to make a decision.

There is nowhere probably in that law that says, "Task if you can come up with a consensus. Task if you can think about it. Task if you want" -- that's the problem that people have with this city. They don't get it.

They view bills like this as job creation for people inside the Beltway. It's job creation. We'll farm this out. We'll counsel this. We'll get a consult on here. We'll get another economic report.

And it all works great inside the Beltway, but to the farmer paying and the poultry farm -- and -- and for full disclosure, my wife and her sister still run their daddy's -- own their chicken farm. And I've got

other folks in the 9th District who -- who run a lot more with poultry. When you get to them and their costs are going up, their costs are rising and their pay is not going up, that's the problem.

The inactivity costs you more than a hearing. It costs people's jobs. It costs people's lives and it changes their input. That's what broken about the system. Inactivity is no excuse any longer. It's time to make a decision.

Mr. Chairman, I yield back.

LANKFORD:

Ms. McCabe, can I ask about 2016? This is a big issue for us. Obviously the reset is coming, 2016. You know in the statute full well, if there are two years prior to that where there's a reduction of 20 percent or more or a year that 50 percent or greater, there's a reset that's built into this.

How is that factoring into your decisions for 2014 and 2015 in the delay? Is that in the back of your mind at this point to saying, "2016 is almost here; we've got to make sure '14 and '15 are right because there's an impact on that"?

MCCABE:

Well, Congressman, I -- I believe, and I'll confirm with my colleague here, it's -- so -- so the -- the -- the statute says that the first year we could effectuate a reset would be after 2016, so that'd be 2017.

LANKFORD:

Right.

MCCABE:

So as we're looking at 2016 and as we're looking at 2014 and 2015, of course, we are very mindful of those triggers and -- and thinking about -- and -- and really, I mean, this is -- I said before that we -- we have sort of a continual effort to be thinking about this program and trying to think far ahead, so yes, we are thinking about the implications for our obligations under a reset scenario.

LANKFORD:

Quick clarification -- I want to yield to the ranking member -- when you're talking about 2015, 2016, and such, is that calendar year or the RFS year?

MCCABE:

The...

LANKFORD:

How are you defining that, or fiscal year? So when you look at that as far as determining, we have the reset time coming based on the two previous years, how are you defining "previous years"?

MCCABE:

The RFS year is the calendar year.

LANKFORD:

OK. But what I'm trying to figure out is the -- you're looking at it right now setting the 2015 number. Before you set the 2017 number -- you're actually doing that in 2016 and 2015 -- are you...

MCCABE:

Right.

LANKFORD:

How are you evaluating that for when that decision has to be made?

MCCABE:

In 2015 we intend to set the volumes for the years 2014, 2015, and 2016. So we would not be doing a reset in any of those three years.

LANKFORD:

But then would assume that would occur, then, in 2016, you would the following year...

MCCABE:

For the 2017 year...

LANKFORD:

So by November the 30th, 2016, you would set and the reset would be complete for 2017 and on?

MCCABE:

That's my understanding on the schedule that would be...

LANKFORD:

OK. Thank you.

Let me yield to the ranking member?

SPEIER:

Mr. Chairman, thank you.

Ms. McCabe, I know you are a person of good will and this hearing was an effort to try and illuminate where some of the problem areas are and to get us focused on fixing them. I frankly don't think we've achieved that goal.

I would really encourage you to provide us with some kind of a document that spells out what you need in order to do your job, because it's not getting done. And there's a lot of frustration by those who are trying to play by the rules of this law. We want this law to work.

And if it doesn't work the 20 or so bills that have already been introduced to repeal it or modify it are going to gain a lot more traction. So help us help you do your job.

And with that I yield back, Mr. Chairman.

Unfortunately I have to leave, and I thank you very much for being here.

LANKFORD:

I have a couple quick questions then we're going to close up in a moment as well.

MCCABE:

OK.

LANKFORD:

I don't know of a single agency that doesn't plan and prepare and doesn't have targeted timelines. This is the decision that needs to be made: We're going to have a draft by this point; we're going to have three months with the draft; we're going to send it to OMB and OIRA to take a look at it; we're going to evaluate it from there; they're going to get it back to us by this time period. Every single one of these decisions has timelines.

What I find unrealistic is for you to say to us, "We don't have any. It will be sometime in 2015." We all know better.

There is a document that you all have worked through setting timelines when this decision is going to be made, when comments are going to be closed, when we're finished replying to comments, when OIRA is going to sign off. All those things exist.

We're just asking the simple question: What is the date? Even if it's just the date that you're sending it to OMB and OIRA to look at, what's the date?

MCCABE:

In all honesty, Congressman, that document for this rulemaking does not exist at this time because we are in the process of figuring out what that schedule will be. And when we...

LANKFORD:

So you're saying you've looked at this for two years and there is no timeline on when you'll make this decision.

MCCABE:

We made the decision in late November that we were not able to finalize this year. That is causing us to relook at our schedule and -- and the anticipated work that we need to do in order to finalize 2014 and also accomplish 2015 and 2016 in the next calendar year.

LANKFORD:

OK. So in June of 2013 when Mr. Grundler was in front of this same committee the conversation was, "We're going to have a proposed rule out for 2014 and get it out." And that occurred.

MCCABE:

Yes.

LANKFORD:

So that means at least before that was leading up there was conversation about what that would be, and then for an entire year of that. So you're saying there is no timeline, this is just floating out there for at least since June of 2013 on when the timeline to finalize 2014 would be.

MCCABE:

Our intent was to finalize the rule as quickly as we could. And we found that we were unable to do so for all the reasons that we've discussed today...

LANKFORD:

But that means there was never a plan to finalize this. I don't mean to be caustic on it. If there's no timeline and there's no goal written anywhere, it's a "we'll get to it when we get to it." There's really no plan.

And to say 2015 is not acceptable when we're over a year late for 2014 and we're already late for 2015. And to say, "We'll make sure we get 2016 on time," it's tough to swallow.

MCCABE:

I appreciate the frustration you're expressing, Congressman. I can assure you this is not a "we'll get to it when we get to it" effort.

LANKFORD:

Well, if there is no plan and there is no deadline other than sometime in 2015 for something that was due a year ago, there's -- there's no sense of urgency to get this done.

Let me shift subjects because I understand -- I hear where you're at. We're not going to get a date.

There was a study that came out -- Northwestern University and the University of Singapore, studied through San Paulo, Brazil and the shift that they made in ozone. You may be very familiar with this; I know you're very familiar with all the ozone issues, as well.

With the new ozone regulations that are coming out and that are being proposed by the administration, I have some concerns because this -- and this comes from several articles dated from April of this year. When they studied what happened when there was a shift to using ethanol in San Paulo in that environment they saw a rise in ozone. They're hypothesis they have in great detail the scientific research they did on it and how ethanol reacts different in the environment than does traditional gasoline, and that ethanol actually increases ground-level ozone.

Now the concern is, as we lean into E15 and E85 at the same time the administration is also focusing on ground-level ozone, we may have a causal effect between the two here if this is really -- holds to be true in the research. Are you familiar with this and are tracking this at all?

MCCABE:

I'm definitely familiar with the issue about NOx emissions related to ethanol, yes.

LANKFORD:

What's your concern on that?

MCCABE:

I would go back to -- to the point of the -- the -- the real emphasis of the Renewable Fuel Standard increasing volumes of these advanced fuels that are particularly beneficial for the environment. I think it's an issue that we need to be very mindful of.

Ozone is a -- is -- is a complex pollutant that is affected by a number of factors and we spend a lot of time looking at expected ozone levels, running models that can adjust for the -- the complicated chemistry in light of various expectations about emissions that would be existing in -- in -- in different areas. So it's an issue that -- that we -- that we definitely have on our radar screen.

LANKFORD:

So NOx-based for -- for ground-level ozone. Sugar- based, corn-based ethanol has a greater effect on ground-level ozone than does some of the advanced -- is that what you're saying?

MCCABE:

I don't know that I'm comfortable answering that question exactly as you've asked it, Congressman, because I -- I think there are a lot of factors that come into play.

LANKFORD:

But this is an issue, that some types of ethanol do increase ground-level ozone?

MCCABE:

There can be an increase in NOx emissions.

LANKFORD:

Right. Which affects the ozone.

MCCABE:

Which can affect ozone, yes.

LANKFORD:

OK. So somehow we've got to figure out how we have a mandate over here to increase ethanol usage and we have a mandate over here to bring down ozone when this could help cause some of this and at least be a factor in part of it, and we have competing priorities here coming from the federal government.

MCCABE:

Well, an -- an important factor is -- is the scale of what we're talking about here, the -- the contributions that might come from ethanol compared to the -- the pool of -- of NOx emissions from...

LANKFORD:

Sure.

MCCABE:
... a variety of sources.

LANKFORD:
But if the federal government plans to tell certain manufacturers, "You have to manufacture different," when at the same time encouraging NOx emissions in other ways based on another mandate, we have a problem because this manufacturer is now spending more money for this and the gas station is now spending more money to be in a certain tank to be able to drive a certain vehicle that actually does increase NOx, and you see what I'm talking about?

This at some point makes every person that does electricity or does any kind of manufacturing their head spin to say, how can the federal government require both of these?

MCCABE:
Yes. I'd just point out again that what -- what we're doing in this program is implementing Congress' statutes.

LANKFORD:
OK. So this is clearly an area we've got to get back to statute on.

I would say to you we're not going to let go of this. Obviously Ms. Speier and I are very, very passionate about this, as are a lot of folks that were not here at the dais based on other meetings that are happening today.

This is a very big issue that we have got to get some certainty on, and "2015 sometime" I think is 2015 November 30th. I think that's the real date that's hanging out there and I think that's an even bigger problem when we're two years late on 2014 and a full year late on 2015. 2016 comes out and then immediately followed by a reset for 2017.

I think the administration's holding onto this and I think that's a problem. And what I'm telling you is we're not going to let go of this. It is the responsible thing to do to hit the deadlines and to be able to get it out and provide some stability into the market what is required and what has been requested and what was considered in law at the very beginning when this was done.

So I really thank you for being here and for answering the questions that you could or would answer for us, and we'll continue to follow up in the days ahead.

Thank you, Ms. McCabe.

MCCABE:
Thank you.

LANKFORD:
This hearing is adjourned.